MINUTES OF THE UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

CITICAPITAL COMMERCIAL CORP v. EGEGIK SPIRIT, et al

Case No. **3-04-cv-00147-RRB-JDR**

THE HONORABLE JOHN D. ROBERTS, United States Magistrate Judge

Jo Ann Mingo, Judicial Assistant - Magistrate Judge's Chambers

MINUTE ORDER FROM CHAMBERS

Order Vacating Default

Plaintiff's answer to amended counter-complaint was due May 1, 2006 under F.R.C.P. 15(a). Plaintiff explains in its May 17, 2006 Notice filed at Docket No. 226-1 that counsel miscalculated the due date for its answer erroneously relying on F.R.C.P. 12(a)(1)(B)(2). The answer was filed May 12, 2006 which was one day late under plaintiff's own calculations. Nevertheless, it is clear to the court that both parties intend to litigate the issues presented in the amended counter claim once their positions have been asserted procedurally. The court's May 11, 2006 order at Docket No. 218 directing the defendant to take action on the absence of counter-defendant's answer should not have been read as allowing a default to be taken in absence of adequate notice to the opposing party. *See* Demoski v. New, 737 P.2d 780, 786 (Alaska 1987) discussing the relevant standard of conduct. Default on the counterclaim was entered the same day as defendant's request for default thereby preventing plaintiff from remedying the oversight. The entry of default by the Clerk is hereby vacated.

Entered at the direction of the Honorable John D. Roberts, United States Magistrate Judge

May 17, 2006

Any request for other information or for clarification, modification, or reconsideration of this Order, or for extension of time must be made as a motion. See FED.R.CIV.P. 7(b)(1); D.Ak.LR. 7.1(1). No one should telephone, fax or write to chambers regarding pending cases. The magistrate judge's judicial assistant and/or law clerk are not permitted to discuss any aspect of this case, provide any information or communicate with any person including litigants, lawyers, witnesses and the public regarding cases.

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